

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

MUZAFFAR LATEEF GILL, M.D.)

File No. 20-2004-155370

Physician's and Surgeon's)

Certificate No. A 63446)

Respondent.)

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 10, 2005.

IT IS SO ORDERED July 11, 2005.

MEDICAL BOARD OF CALIFORNIA

By: _____

Ronald L. Morton, M.D., Chair

Panel A

Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MUZAFFAR LATEEF GILL, M.D.
Shifa International Hospital
Sector H-8/4
Islamabad, Pakistan 0119251-444-6801

Physician and Surgeon's
Certificate No. A 63446

Respondent.

Case No. 20-2004-155370

OAH No. N-2005010538

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on May 9, 2005.

Daniel J. Turner, Deputy Attorney General, Department of Justice, Health Quality Enforcement Section, represented the Division of Medical Quality.

Muzaffar Lateef Gill, M.D., did not appear.

The record was held open for the receipt of the original of a letter from Dr. Gill requesting postponement. The letter was received May 10, 2005, and a copy was forwarded to the Deputy Attorney General the same day. Dr. Gill also sent a copy of the letter to the Executive Director of the Medical Board of California. It was unclear whether further response was required by any party, so the Administrative Law Judge held the record open for an additional week to permit response, if any. No further response was received from any party. The record was closed and the matter was submitted on May 17, 2005.

FACTUAL FINDINGS

1. David T. Thornton made the allegations contained in the Accusation in his official capacity as Interim Executive Director, Medical Board of California (the Board), Department of Consumer Affairs, State of California. The Board has jurisdiction to revoke,

suspend or otherwise discipline any holder of a Certificate to practice as a Physician and Surgeon in the State of California, provided proof of cause for the action is proved by clear and convincing evidence.¹ Muzaffar Lateef Gill, M.D., timely filed a Notice of Defense to the Accusation. The matter was set for an evidentiary hearing.

2. The Board issued Muzaffar Lateef Gill, M.D., Physician and Surgeon's Certificate number A 63446 on September 12, 1997. The Certificate is renewed and current with an expiration date of September 30, 2005. There is no history of previous disciplinary action against Dr. Gill.

3. Notice of the date, time and place of the evidentiary hearing on the Accusation was duly given by the Deputy Attorney General to Dr. Gill, pursuant to the provisions of Government Code sections 11505 and 11509. Dr. Gill did not appear at the evidentiary hearing. Dr. Gill wrote a letter to the Deputy Attorney General dated April 24, 2005, with a copy to the Interim Executive Director. Dr. Gill requested in his letter that the evidentiary hearing "scheduled for May 9th 2005," be postponed for one year. Dr. Gill noted he had applied for a visa to visit the U.S., but expected that it would take 9-12 months for clearance and issuance. He attached a copy of a receipt for the application for a nonimmigrant visa from the U.S. Embassy in Islamabad.

4. Good cause does not exist for postponement of the evidentiary hearing. The Notice of Hearing was issued February 2, 2005, after at least two correspondence exchanges between the Deputy Attorney General and Dr. Gill. Dr. Gill's request for postponement for a year is unreasonable and untimely. In one of those exchanges, Dr. Gill requested a settlement proposal; advised the Board and the Deputy Attorney General he did not want a trial on the Accusation; and noted that even though he had never practiced medicine in California, he still wanted to try to preserve his Certificate. Good cause does not exist for Dr. Gill's failure to appear at the evidentiary hearing. It is clear from the evidence Dr. Gill had actual notice of the date, time and place of the evidentiary hearing. The matter was conducted as a default.²

5. Dr. Gill was found guilty by jury verdicts on April 12, 2002, in the District Court, Seventh Judicial District, County of Stearns, State of Minnesota, of the crimes of violations of Minnesota Statutes sections 609.222, subdivision 1, assault in the third degree, and 609.11, terroristic threats, both felonies. Dr. Gill posted a \$100,000 bond and signed a promise to appear for sentencing on May 16, 2002. Dr. Gill failed to appear for sentencing. The Stearns County District Court revoked the bond and issued a warrant for Dr. Gills' arrest. The warrant remains outstanding to date.

6. The facts leading to the jury verdicts are drawn from the sworn statement of the Chief of Police of the City of Sartell, Minnesota, in support for a complaint against Dr.

¹ Business and Professions Code sections 2227, 2234, *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 835, 842.

² Government Code section 11520.

Gill and for issuance of a warrant seeking Dr. Gill's arrest. The sworn statement related that Dr. Gill's recently divorced wife had complained that on March 27, 2001, Dr. Gill made stabbing motions toward his wife's abdomen with a kitchen knife and threatened to kill her if she did not leave their home. Dr. Gill's son witnesses the incident. She also complained that on November 29, 2000, Dr. Gill slapped his wife and pushed her, causing her to fall down a flight of stairs, because she had not mailed a letter for him, as he had asked. One of Dr. Gill's children witnesses this incident as well. Mrs. Gill required hospitalization and sustained a right patellar plateau fracture.

7. The convictions sustained by Dr. Gill are substantially related to the qualifications, functions and duties of a physician and surgeon. A physician and surgeon takes the Hippocratic Oath when receiving his credentials, a key tenet of which is "Do no harm." Acts of physical violence and death threats upon one's spouse, or ex-spouse, is the antithesis of this oath to heal, not harm.

8. There is no evidence in mitigation or justification. There is no evidence in rehabilitation, despite the passage of time from the incidents and the jury verdicts. Dr. Gill fled the jurisdiction and sentence has not yet been imposed.

9. The Deputy Attorney General submitted a declaration setting forth costs of prosecution of this matter. The declaration claims 23.5 hours were spent to investigate, plead, correspond, attempt to settle and prepare the matter for trial, at a cost to the Medical Board of \$3266.50. The costs are presumed reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2234 provides, in pertinent part:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

[¶]

(f) Any action or conduct which would have warranted the denial of a certificate.

[¶]"

2. Business and Professions Code section 2236 provides, in pertinent part:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the

meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.”

3. Dr. Gill was convicted by a jury of two felony offenses involving force and violence upon his wife on April 12, 2002. Each conviction is substantially related to the qualifications, duties and functions of a physician and surgeon, as set forth in the Factual Findings. In aggravation, Dr. Gill violated his bond and promise to appear and fled the country, eventually to Pakistan, to avoid sentencing, which is still pending. Dr. Gill is guilty of unprofessional conduct, within the meaning of section 2234.

4. Business and Professions Code section 2227 provides, in pertinent part:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the division.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

(4) Be publicly reprimanded by the division.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the division and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

5. Legal cause exists for the imposition of disciplinary action against Dr. Gill. The offenses are recent, serious felonies and involve acts of violence on his wife in the presence of at least one of his children. The only mitigating factors are that the offenses did not occur in a clinical setting and were not against a patient. In aggravation, Dr. Gill fled the country to avoid sentencing. Revocation of Dr. Gill’s Certificate is the only reasonable disposition, on the facts contained in this record.

6. Business and Professions Code section 125.3, states, in pertinent part:

“(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board or the board created by the Chiropractic Initiative Act, the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board’s decision, the board may enforce the order for repayment in any

appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs."

7. As set forth in Factual Finding 9, the reasonable costs of investigation and enforcement in this matter is \$3266.50. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, requires the Administrative Law Judge to consider the following factors in determining whether the costs to be awarded are reasonable and the amount to be awarded:

- The board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a licensee who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed.
- The board must consider the licensee's subjective good faith belief in the merits of his or her position.
- The board must consider whether the licensee has raised a colorable challenge to the proposed discipline.
- Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation, the board must determine that the licensee will be financially able to make later payments.
- Finally, the board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct.

8. Taking into account the factors required by *Zuckerman*, under all of the facts and circumstances, and balancing Dr. Gill's interests against the Board's obligation to protect the public through pursuit of licensing actions such as this one, assessment of costs in the amount claimed of \$3266.50 against respondent is reasonable and appropriate. The cost of the investigation and enforcement is not disproportionate to the work required to investigate and prove the violations. The violations are not trivial. The allegations took place in Minnesota and efforts to resolve the matter short of trial were required to be conducted with Dr. Gill in Pakistan. The Board prevailed on all allegations. There was no evidence Dr. Gill

is unable to pay any costs assessed. The Deputy Attorney General's time claimed to perform the work set forth in the declaration appears, under the circumstances, and considering the *Zuckerman* factors, to be reasonable.

ORDER

Physician and Surgeon's Certificate A63446, issued by the Medical Board of California to Muzaffar Lateef Gill, M.D., is REVOKED. Dr. Gill shall reimburse the Board its costs in the amount of \$3266.50 forthwith. The Certificate shall not be reinstated until the costs obligation is satisfied, within the requirements of Business and Professions Code section 125.2, subdivision (g).

DATED: June 17, 2005

Stephen J. Smith
STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General
of the State of California
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10 **BEFORE THE**
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 MUZAFFAR LATEEF GILL, M.D.
15 Shifa International Hospital
Sector H-8/4
16 Islamabad, Pakistan

17 Physician and Surgeon's Certificate No. A 63446

18 Respondent.

Case No. 20-2004-155370

A C C U S A T I O N

19
20 Complainant alleges:

21 **PARTIES**

22 1. David T. Thornton ("Complainant") brings this Accusation solely in his
23 official capacity as the Interim Executive Director of the Medical Board of California, Department
24 of Consumer Affairs.

25 2. On or about September 12, 1997, the Medical Board of California issued
26 Physician and Surgeon's Certificate Number A 63446 to Muzaffar Lateef Gill ("Respondent"). The
27 Physician and Surgeon's Certificate was in full force and effect at all times relevant to the charges
28 brought herein and will expire on September 30, 2005, unless renewed.

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 13, 2004
BY Calvin M. Mac **ANALYST**

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(f) Any action or conduct which would have warranted the denial of a certificate.

6. Section 125.3 of the Code provides, in pertinent part, that the Division may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7. Section 14124.12 of the Welfare and Institutions Code states, in pertinent part:

(a) Upon receipt of written notice from the Medical Board of California, the Osteopathic Medical Board of California, or the Board of Dental Examiners of California, that a licensee's license has been placed on probation as a result of a disciplinary action, the department may not reimburse any Medi-Cal claim for the type of surgical service or invasive procedure that gave rise to the probation, including any dental surgery or invasive procedure, that was performed by the licensee on or after the effective date of probation and until the termination of all probationary terms and conditions or until the probationary period has ended, whichever occurs first. This section shall apply except in any case in which the relevant licensing board determines that compelling circumstances warrant the continued reimbursement during the probationary period of any Medi-Cal claim, including any claim for dental services, as so described. In such a case, the department shall continue to reimburse the licensee for all procedures, except for those invasive or surgical procedures for which the licensee was placed on probation.

8. Section 2236 of the Code states:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a

1 crime in order to fix the degree of discipline or to determine if the
2 conviction is of an offense substantially related to the qualifications,
functions, or duties of a physician and surgeon.

3 (d) A plea or verdict of guilty or a conviction after a plea
4 of nolo contendere is deemed to be a conviction within the meaning
of this section and Section 2236.1. The record of conviction shall be
5 conclusive evidence of the fact that the conviction occurred.

6 **FIRST CAUSE FOR DISCIPLINE**

(Conviction of a Crime)
7 [Bus. & Prof. Code §2236 (a)]

8 9. Respondent is subject to disciplinary action under section 2236 (a) of the Code
9 in that he was convicted of inflicting great bodily harm and of committing a crime of violence
10 against his wife. The circumstances are as follows:

11 10. On or about April 12, 2002, in Court File No. K8-01-1397 of the District
12 Court of Sterns County, State of Minnesota, a jury found Respondent guilty of one count of Assault
13 in the Third Degree, a felony (Muzaffar Lateef Gill then and there being, did wrongfully, unlawfully,
14 and intentionally assault [M.N.¹] and inflict substantial bodily harm), and of one count of Terroristic
15 Threats, a felony (that the defendant, Dr. Muzaffar Lateef Gill, then and there being, did wrongfully,
16 unlawfully, and intentionally threaten, directly or indirectly, to commit any crime of violence with
17 the purpose to terrorize [M.N.], or in a reckless disregard of the risk of causing such terror).

18 11. The Minnesota criminal complaint against Respondent in Court File No. K8-
19 01-1397, alleged that the victim, M.N. was Respondent's wife at the time of the assault and
20 terroristic threats and that Respondent on or about March 27, 2001, made thrusting motions with a
21 knife at M.N.'s abdomen and threatened to kill her unless she left the home. The complaint further
22 alleged that or about November 29, 2000, Respondent grabbed M.N.'s hair and threw her down a
23 short flight of stairs and that she was taken to a hospital where an examination showed that the
24 assault had caused M.N. to suffer a right tibial plateau fracture.

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28 1. Complainant will disclose the full name of the victim to Respondent upon a timely
request for discovery.

12. Respondent's Minnesota conviction of assault and terroristic threats constitute convictions of crimes within the meaning of section 2236 (a) of the Code and grounds for discipline.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)
[Bus. & Prof. Code §2234]

13. Complainant incorporates by reference paragraphs 10 and 11, above, as if fully set forth at this point.

14. Respondent's conduct in assaulting and terrorizing his wife M.N. constitutes unprofessional conduct within the meaning of section 2234 of the Code and grounds for discipline.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Division of Medical Quality issue a decision:

1. Revoking or suspending Physician and Surgeon's Certificate Number A 63446, issued to Muzaffar Lateef Gill;

2. Revoking, suspending or denying approval of Muzaffar Lateef Gill's authority to supervise physician's assistants, pursuant to section 3527 of the Code;

3. Ordering Muzaffar Lateef Gill to pay the Division of Medical Quality the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring;

4. Taking such other and further action as deemed necessary and proper.

DATED: August 13, 2004



DAVID T. THORNTON
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant